

May 4, 2009 - Regular Town Council Meeting

At a Regular Meeting of the Town Council of the Town of Middletown, RI, held at the Middletown Town Hall on Monday, May 4, 2009 at 7:00 P.M.

Council President Christopher T. Semonelli, Presiding

Vice Chairman Richard Cambra

Councillor Frank A. Bozyan

Councillor M. Theresa Santos

Councillor Edward J. Silveira, Jr.

Councillor Robert J. Sylvia

Councillor Barbara A. VonVillas, Members Present

ACTING AS A BOARD OF LICENSE COMMISSION

Councillor Silveira recused himself from acting on the following item of business, due to a possible conflict of interest.

1. Application of First Beach, LLC dba Newport Beach Hotel & Suites holder of a Class BT Alcoholic Beverage License for premises located at 1 Wave Avenue, Middletown to TRANSFER said license to LHM Restaurant, Inc. dba Newport Beach House & Suites for use at the same premises. (Requires Advertising for Public Hearing)

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to advertised said license transfer for public hearing to be held on June 1, 2009 regular meeting of the board.

CONSENT CALENDAR

Councillor Bozyan requested that item #6 be heard under the Town Council portion of the docket.

1. Approval of Minutes – Special Meeting, April 20, 2009.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to approve said minutes.

2. Approval of Minutes – Regular Meeting, April 20, 2009.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to approve said minutes.

3. Approval of Minutes – Special Meeting, April 22, 2009.

On motion of Vice Chairman Cambra, duly seconded, it was voted

unanimously to approve said minutes.

4. Email communication Town Clerk, Town of North Kingstown, re: Requesting support of the repeal of the Caruolo Act.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said email communication.

5. Communication of A. Ralph Mollis, Secretary of State, re: Request support in opposition to 2009- H5983, Article 4.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said communication.

6. Memorandum of Arthur S. Weber, Jr., Chairman, Middletown Planning Board, with enclosures, re: Proposed Zoning Ordinance

amendment, Section 705, relating to fences and walls. (Requires advertising for Public Hearing)

On motion of Councillor Bozyan, duly seconded, it was voted unanimously to receive said memorandum and refer said proposed zoning ordinance amendment to the Planning Board for further review.

7. Memorandum of Tax Collector, with enclosures, re: Cancellation of taxes for certain Middletown taxpayers.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said memorandum.

8. Resolution of the Council, re: Cancellation of taxes for certain Middletown taxpayers.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to pass said resolution.

9. Communication of Town Administrator, with enclosures, re: Financial Statements for period ending March 31, 2009.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said communication and financial statements.

10. Applications two (2) for Special Events permits from 1) Julie Andreozzi, Andreozzi-Valois Wedding, at Dunlap-Wheeler Park on Friday, September 4, 2009 at 5:00 P.M. and 2) Domenica Perrupato, Perrupato-Hagan Wedding, at Dunlap-Wheeler Park on Friday, June 5, 2009 at 6:00 P.M.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to grant said special events permits.

11. Petitions received from the following named persons for perpetual care of burial lots in the Middletown cemetery:

a. Robert F. Matose – Section 52-East, Lot 209

b. Thomas Wilson, Sr. – Section 54, Lots 105 and 106

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive and approve said petitions.

TOWN COUNCIL

Councillor Silveira disqualified himself from acting on the following item of business, due to a possible conflict of interest.

1. Application of Galvin Pasta, LLC dba Prima Pasta, 796 Aquidneck Avenue, for a Victualling House License for the 2008-2009 licensing year. (NEW)

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to grant said license, contingent on Building Official, Fire Marshall, Board of Health and Public Works approvals.

2. Application of P.D. Humphrey Co., Inc. dba Beach Paint, 750 Aquidneck Avenue, for a Holiday License for the 2009-2010 licensing year. (NEW)

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to grant said license.

Councillor Silveira recused himself from acting on the following three items #3, #4 & #5 of business, due to a possible conflict of interest.

3. Memorandum of Town Administrator, re: Amending Second Beach Mobile Concession Contract.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said memorandum.

4. Resolution of the Council, re: Amending Second Beach Mobile Concession Contract.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to pass said resolution.

5. Application of Lee H. Cone dba Mad Dawg Vending, Portsmouth, for a Hawkers License for the 2009-2010 licensing year. (NEW)

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to grant said license.

6. Memorandum of Town Administrator, with enclosures, re: Vierra Terrace Drainage Easement and Road Maintenance.

Manny Mello, Beacon Terrace North, expressed concern with the drainage in the Vierra Terrace area questioning if the easement should allowed.

Town Administrator Shawn Brown noted that the Public Works Director and Town Engineer have reviewed the Easement and Road Maintenance agreement and recommend approval.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said memorandum, approve said Vierra

Terrace Drainage Easement, approve said Road Maintenance Agreement and authorize the Town Administrator to execute said documents.

Council President Semonelli disqualified himself from acting on the following item of business, due to a possible conflict of interest.

Councillor Bozyan disqualified himself from acting on the following item of business, due to a possible conflict of interest.

Vice Chairman Cambra, Presiding

7. Public Hearing (Advertised)

An Ordinance of the Town of Middletown (First Reading)

An Ordinance in amendment to the Town Code of the Town of Middletown, Chapter 152 Zoning Code, Article 4 Definitions, Article 22

– Senior Independent Living Facilities.

Public Hearing was declared open.

Town Planner Ronald Wolanski explained that the amendment proposal was requested by a local attorney several months ago. The existing ordinance requires all residents in the unit to be 55 years of age or older, which is not in accordance with state law, which allows only one person in each unit must be 55 or over.

Frances A. Coulter, 24 Buck Road, addressed the Council, expressing concern that the amendment to the ordinance needs further review. Ms. Coulter requests the Council not to adopt the amendment to the ordinance.

Bruce Long, 1 Winfield Court, noted that he believes that the proposed amendment is not in line with a Senior Independent Living Facility. Mr. Long requests the Council to decide if a senior living

facility should be in Middletown and if so, change the age to 62 or older.

Bruce Ryerson, 391 Forest Avenue, addressed the Council, reviewing area facts prepared by the Building Official issued at the April 20, 2009 Special Meeting of the Council. Mr. Ryerson requests the Council to repeal Article 22 of the Zoning Code.

Roberta Duffy, 284 Forest Avenue, explained that changes to the age requirement of the ordinance may increase Town Services. Ms. Duffy believes the ordinance should be repealed in its entirety

Alice Curran, 429 Forest Avenue, addressed the Council noting that she does not support the change in the ordinance.

Pat Hayes, Jr., Esquire, 31 America's Cup Avenue, representing the developer, reviewed a communication from Planning Board, dated February 25, 2004, noting that area studies done were based on one

person in each unit being 55 years of age or older.

Councillor VonVillas noted concern with the legality of the ordinance and suggests to table the issue until the next regular meeting of the Council.

Councillor Sylvia and Vice Chairman Cambra suggest the ordinance be further reviewed by the Planning Board.

Town Solicitor Michael W. Miller noted the proposed amendment is consistent with state and federal laws. Mr. Miller recommends to leave the public hearing open and to receive the ordinance on its first reading.

On motion of Councillor Sylvia, duly seconded, it was voted unanimously to refer this matter to the Planning Board for further review.

Council President Semonelli presiding.

8. Public Hearing (Advertised)

An Ordinance of the Town of Middletown (First Reading)

An Ordinance in amendment to the Town Code of the Town of Middletown, Chapter 152 Zoning Code, Article 25A – Wind Energy Conversion Facilities.

Public Hearing was declared open.

Town Planner Ron Wolanski addressed the Council noting in October 2007 the Town Council adopted a Zoning Ordinance amendment that requires a Special Use Permit for the installation of wind turbines. The proposed ordinance being considered provides for the following:

On motion of Councillor Bozyan, duly seconded, it was voted unanimously to amend “may” to “shall”, located in Section 25A08 Abandonment or Decommissioning, subsection C. Financial Surety.

On motion of Councillor Silveira, duly seconded it was voted unanimously to amend Section 25A03 General Requirements, subsection E Utility-scale wind facility, after districts; provided, however, that the town may erect a utility-scale wind facility on privately-owned land in a residential district, through a contract with the landowner, by satisfying all requirements of this article except:

- 1. Section 25A03, F, Proof of Liability Insurance**
- 2. Section 15A06, A, Emergency Services**
- 3. Section 25A08, Abandonment or Decommissioning.**

Antone Viveiros, 110 Indian Hill Road, expressed concern with height limitation and lot coverage.

Art Benner, 3 Namquid Drive, suggests a minimum height be set for the bottom of the wind turbine blade to the ground.

Councillor Bozyan requests an amendment for height safety.

Public Hearing remains open

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said ordinance on its first reading, as amended.

9. An Ordinance of the Town of Middletown (Second Reading)

An Ordinance in amendment to the Town Code of the Town of Middletown, Title IX, General Regulations, Chapter 100, Special Events, as amended.

Art Benner, 3 Namquid Drive, questioned how the special events ordinance affects the farmers market.

Town Administrator Shawn Brown, responding to Mr. Benner, noted that the Farmers Market would not require a special event permit.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to adopt said ordinance on its second reading.

10. An Ordinance of the Town of Middletown (Second Reading)

An Ordinance in amendment to the Town Code of the Town of Middletown, Title IX, General Regulations, Chapter 101, Tent, as amended.

On motion of Vice Chairman Cambra, duly seconded, it was voted

unanimously to refer said ordinance to the Planning Board for recommendation.

11. Memorandum of Police Chief, re: 2009 Stimulus Direct Grant Award.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said memorandum.

12. Resolution of the Council, re: 2009 Stimulus Direct Grant Award.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to pass said resolution.

13. Memorandum of Town Administrator, with enclosures, re: Funds for Relocating Playground Equipment. (JFK Elementary School)

Town Administrator Shawn Brown noted that the School Department has requested funds to relocate the playground equipment from JFK to the Gaudet School. Mr. Brown recommends the Council grant this request. The facility is used by the School Department and the community. The money was not budgeted in the School budget and would like utilize the beach fund.

Middletown School Department Facilities Director Ed Collins noted that if granted, the School will put the project out to bid. Mr. Collins noted that the playground equipment should be salvaged, it is in great condition.

Vice Chairman Cambra requests the cost difference between moving the existing equipment and purchasing new.

Town Administrator Brown noted that a similar project was done using funds from Parks and Recreation for the repair of the basketball

and tennis courts at Gaudet.

Councillor VonVillas noted the need for a master plan for usage of parks in Middletown.

Councillor Santos noted she is not opposed to moving the playground equipment, but is opposed to using monies from the Parks and Recreation Fund.

Antone Viveiros, 110 Indian Hill Road, noted that the School Department should have planned for the closing of the JFK School to include moving the playground equipment.

Manny Mello, Beacon Terrace North, noted his concern for the Town paying for the cost of moving the playground equipment.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said memorandum.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously for the Middletown Public School Department to research the cost of purchasing new equipment for the Gaudet site.

14. Resolution of the Council, re: Approving funding for Relocating Playground Equipment. (JFK Elementary School)

No action taken.

15. Memorandum of Town Administrator, with enclosures, re: Award of contract for Linden Park Playground Project.

Manny Mello, Beacon Terrace North, questioned if the \$48,505.75

includes site preparation.

Town Administrator Shawn Brown, responding to Mr. Mello noted that amount includes the preparation for the site.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said memorandum.

16. Resolution of the Council, re: Award of contract for Linden Park Playground Project.

Discussion centered around where funds for the project are be allocated from and the size of the playground.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to pass said resolution.

17. Communication of Antone C. Viveiros, 110 Indian Hill Road, with enclosure, re: Proposal to keep the PAYT trash collection system out of the tax rate, and self sustainable.

Antone Viveiros, 110 Indian Hill Road, addressed the Council noting that he would utilize a business like approach for the Refuse & Recycling Fund. Mr. Viveiros reviewed his proposal entered here:

Mr. Vivieros urges the Council to move forward with this suggested proposal.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said communication.

Council President recused himself from acting on the following item

of business, due to a possible conflict of interest.

Vice Chairman Cambra Presiding.

18. Communication of MHS Senior and Junior Post Prom Committees, re: Request for support of Middletown High School Senior and Junior post prom activities.

On motion of Councillor Silveira, duly seconded, it was voted unanimously to receive said communication and approve (\$200.) for both the Senior and Junior post prom activities events to be appropriated from the Council President's Discretionary Fund.

Council President Semonelli Presiding.

19. Communication of Ronald A. Pearl, 22 Gosset's Turn Drive, re:

Resignation from Middletown Tax Assessment Review Board.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said communication and accept said resignation with regret.

On motion of Councillor Sylvia, duly seconded it was voted unanimously to appoint Saverio DeRuggiero to the Middletown Tax Assessment Review Board, to complete a term expiring October 2011.

**20. Appointment of one (1) member to the Middletown Tax Assessment Review Board to complete a term expiring October 2011.
(Bi-partisan Board)**

21. Appointment of one (1) member to the Zoning Board of Review as third alternate for a term expiring April 2010.

Vice Chairman Cambra nominated Michael Potter.

Councillor Silveira nominated Helen Christy.

A vote was taken; on motion of Vice Chairman Cambra, duly seconded, it was voted to appoint Michael Potter to the Zoning Board of Review as third alternate for a term expiring April 2010; Council President Semonelli, Vice Chairman Cambra, Councillor Bozyan, Councillor Santos and Councillor VonVillas voted YES; Councillor Silveira and Councillor Sylvia voted NO to said motion.

PUBLIC FORUM SESSION

Pursuant to Rule 23 of the Rules of the Council, Citizens may address the town on one (1) subject only, said subject of substantive Town business, neither discussed during the regular meeting nor related to personnel or job performance. Citizens may speak for no longer than five (5) minutes and must submit a public participation form to the

Council Clerk prior to the start of the meeting.

No one addressed the Council at this session

EXECUTIVE SESSION

Pursuant to provisions of RIGL, Sections 42-46-2., 42-46-4. and 42-46-5. (a) (2) litigation (Dicon vs. Town of Middletown), (5) land acquisition (Valley Road), (2) collective bargaining (Police, Fire, Public Works and Town Hall), (2) potential litigation (Disposition of Surplus Navy property), (5) lease (East Main Road – Plat 118 Lot 19), (5) lease (Mitchell's Lane – Plat 123, Lot 700), and 5) lease (East Main Road – Plat 118, Lot 31).

On motion of Councillor Sylvia, duly seconded, it was voted unanimously to recess this meeting at 9:05 P.M. and reconvene in executive session.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to reconvene this meeting in open session at 9:55 P.M.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to authorize the Town Administrator to execute the lease agreement for the Tibbitts Farm area and execute the lease agreement for Boulevard Nurseries.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to approve the proposed agreement with the IBPO.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to seal the minutes of the executive session pursuant to Section 42-46-7. RIGL.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to adjourn this meeting at 10:00 P.M.

Wendy J.W. Marshall, CMC

Council Clerk

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